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and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 74-261)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textile products in category 47 manufactured or produced in Romania

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 4, 1974.

There is published below directive of September 26, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textile products in category 47 manufactured or produced in Romania. This directive amends but does not cancel that Committee's directive of December 27, 1973 (T.D. 73-24).

This directive was published in the Federal Register on September 30, 1974 (39 FR 35200), by the Committee.

(QUO-2-1)

JAMES D. COLEMAN,
for R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

September 26, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On December 27, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry

during the twelve-month period beginning January 1, 1974 of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in the Socialist Republic of Romania, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Pursuant to paragraph 4 of the Bilateral Cotton Textile Agreement of December 31, 1970 between the Governments of the United States and the Socialist Republic of Romania, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible and for the twelve-month period beginning January 1, 1974, the level of restraint established for Category 47 in the aforesaid directive of December 27, 1973 to 49,308 dozen.[2]

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of cotton textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74-262)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in certain categories manufactured or produced in Peru

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 8, 1974.

There is published below the directive of September 26, 1974, received by the Commissioner of Customs from the Chairman, Com-

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of December 31, 1970 between the Governments of the United States and the Socialist Republic of Romania which provide, in part, that within the aggregate, limits on certain categories may be exceeded by not more than five percent; for limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

[2] This level has not been adjusted to reflect any entries made on or after January 1, 1974.

mittee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles and cotton textile products in certain categories manufactured or produced in Peru.

This directive was published in the Federal Register on October 1, 1974 (39 FR 35410), by the Committee.

(QUO-2-1)

JAMES D. COLEMAN,
for R.N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

September 26, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Pursuant to the Bilateral Cotton Textile Agreement of November 23, 1971, between the Governments of the United States and Peru, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective October 1, 1974 and for the twelve-month period extending through September 30, 1975, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 22, 56, 57, 58, and 60, produced or manufactured in Peru, in excess of the following levels of restraint:

Category	*Twelve-Month Level of Restraint*
22	2,025,844 square yards
56	56,623 dozen
57	46,305 dozen
58	104,186 dozen
60	16,710 dozen

In carrying out this directive, entries of cotton textiles and cotton textile products in the above categories, produced or manufactured in Peru, which have been exported to the United States from Peru prior to October 1, 1974, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period October 1, 1973 through September 30, 1974. In the

event that the levels of restraint established for such goods for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of November 23, 1971, between the Governments of the United States and Peru which provide, in part, that within the aggregate limit, the limits of certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements. Any appopriate adjustments pursuant to the provisions of the bilateral agreement referred to above will be made to you by further letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 25, 1974 (39 F.R. 3430).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Peru and with respect to imports of cotton textiles and cotton textile products from Peru have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

(T.D. 74-263)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products in all 64 categories manufactured or produced in Colombia

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 8, 1974.

There is published below the directive of September 26, 1974, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the visa requirements for cotton textiles and cotton textile products in categories 1 through 64, manufactured or produced in Colombia. This directive amends but does not cancel that Committee's directive of April 30, 1974 (T.D. 74-163).

This directive was published in the Federal Register on October 1, 1974 (39 FR 35409), by the Committee.

(QUO-2-1)

JAMES D. COLEMAN,
for R. N. MARRA,
Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

September 26, 1974.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends, but does not cancel, the directive of April 30, 1974, from the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit, under certain specified conditions, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in Colombia for which the Government of Colombia had not issued an appropriate visa. One of the requirements is that each

visa include the signature of a Colombian official authorized to issue visas.

Under the provisions of the Bilaterial Cotton Textile Agreement of June 15, 1971, as amended, between the Governments of the United States and Colombia, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, the directive of April 30, 1974 is amended, effective as soon as possible, to authorize Reinaldo Aleman-Palencia and Jose Ducardo Patino-Vargas to issue visas in place of Humberto Gomez-Diaz and Raul Farello P., who will no longer sign.

The actions taken with respect to the Government of Colombia and with respect to imports of cotton textiles and cotton textile products from Colombia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

(T.D. 74-264)

Foreign currencies—Quarterly list of rates of exchange

Lists of buying rates in U.S. dollars certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for use during the quarter shown

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 4, 1974.

The appended table lists the buying rates in U.S. dollars for certain foreign currencies first certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under the provisions of section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for a day in the quarter shown. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 158, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

(LIQ-3-O:D:T)

JAMES D. COLEMAN,
for R. N. MARRA,
Director,
Duty Assessment Division.

558-770—74——2

List of values of foreign currencies certified to the Secretary of the Treasury by the Federal Reserve Bank of New York under provisions of section 522(c) Tariff Act of 1930, as amended

QUARTER BEGINNING OCTOBER 1 THROUGH DECEMBER 31, 1974

Country	Name of Currency	U.S. Dollars
Australia	Dollar	$1.3125
Austria	Schilling	.0532
Belgium	Franc	.025550
Canada	Dollar	1.0154
Denmark	Krone	.1636
Finland	Markka	.2617
France	Franc	.2116
Germany	Deutsche Mark	.3780
India	Rupee	.1240
Ireland	Pound	2.3362
Italy	Lira	.001514
Japan	Yen	.003354
Malaysia	Dollar	.4145
Mexico	Peso	.0800
Netherlands	Guilder	.3707
New Zealand	Dollar	1.2980
Norway	Krone	.1809
Portugal	Escudo	.0388
South Africa	Rand	1.4275
Spain	Peseta	.017395
Sri Lanka	Rupee	.1480
Sweden	Krona	.2249
Switzerland	Franc	.3400
United Kingdom	Pound	2.3362

(T.D. 74–265)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 4, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 74–191 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Australia dollar:	
September 25, 1974	$1.3075
September 26, 1974	1.3065
September 27, 1974	1.3060
September 30, 1974	1.3100
Finland markka:	
September 26, 1974	$0.2618
September 27, 1974	.2614
September 30, 1974	.2616
New Zealand dollar:	
September 25, 1974	$1.2950
September 26, 1974	1.3000
September 27, 1974	1.2980
September 30, 1974	1.2980

(LIQ–3–O:D:T)

JAMES D. COLEMAN,
for R. N. MARRA,
Director,
Duty Assessment Division.

[Published in the Federal Register October 17, 1974 (39 FR 37076)]

(T.D. 74-266)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 4, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR Part 159, Subpart C).

Hong Kong dollar:	
September 23–27, 1974	$0.1975
Iran rial:	
September 23–27, 1974	$0.0149
Philippines peso:	
September 23, 1974	$0.1495
September 24, 1974	.1485
September 25, 1974	.1480
September 26, 1974	.1480
September 27, 1974	.1480
Singapore dollar:	
September 23, 1974	$0.4030
September 24, 1974	.4055
September 25, 1974	.4060
September 26, 1974	.4083
September 27, 1974	.4095
Thailand baht (tical):	
September 23–27, 1974	$0.0498

(LIQ-3-O:D:T)

JAMES D. COLEMAN,
for R. N. MARRA,
Director
Duty Assessment Division.

(T.D. 74-267)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., October 1, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR Part 159, Subpart C).

Hong Kong dollar:	
September 16–20, 1974	$0.1975
Iran rial:	
September 16–20, 1974	$0.0149
Philippines peso:	
September 16, 1974	$0.1485
September 17, 1974	.1482
September 18, 1974	.1482
September 19, 1974	.1480
September 20, 1974	.1498
Singapore dollar:	
September 16, 1974	$0.4035
September 17, 1974	.4035
September 18, 1974	.4035
September 19, 1974	.4045
September 20, 1974	.4050
Thailand baht (tical):	
September 16–20, 1974	$0.0490

(LIQ-3-O:D:T)

R. N. MARRA,
Director,
Duty Assessment Division.

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4558)

SWEET BRIAR, INC. *v.* UNITED STATES

Administration

RELIQUIDATION FOR FRAUD—REPORTS OF CUSTOMS REPRESENTATIVES—ABSENCE OF FINDINGS BY DISTRICT DIRECTOR

Ladies dresses manufactured in and exported from the Philippine Islands were classified in liquidation upon entry at Atlanta, Ga. under TSUS item 382.03 and treated as "Philippine articles" in accordance with Headnote 3(c) of TSUS, and thereafter re-

liquidated pursuant to 19 U.S.C.A. § 1521 at the rate advance on 2 of 11 entries involved and at a value advance on all 11 entries. In its protest the importer claims the reliquidations to be illegal and void.

The evidence shows that the reliquidations were performed by a liquidating officer in possession of copies of a customs agent's report and a letter from the regional commissioner of customs suggesting reliquidation under section 1521 for undervaluation and false invoicing which was said to have been handed to the liquidating officer by the assistant district director. There was no evidence that the district director made a finding of probable cause to believe there was fraud in the case before the reliquidation. Also, an examination of the two customs representatives' reports giving rise to the reliquidations reveals that one of the customs representatives concluded that the undervaluation was the result of a "slip up"; and the data in the other customs representative's report appeared to be incompatible with the charge of invoicing with a false country of origin in that the photocopy of the certificate of identification on which the customs agent relied describes the merchandise exported from the Philippines to the United States as 624 dozen dresses on its face. and a photocopy of a document stapled to the back of the certificate shows various entries into the Philippines of a variety of merchandise which is not shown to be in any way connected with the 624 dozen dresses described on the face of the certificate.

Held, where a statute requires a finding to be made by an official before an action can be authorized, the "finding" is the *sine qua non* to the taking of the action, and where the evidence adduced by the Government in support of reliquidations challenged by the importer fails to establish that the district director made the requisite "findings" of probable cause to believe that there was fraud in the case under section 1521 prior to the reliquidations, the reliquidations are illegal and void.

United States Customs Court, Third Division

Protest 66/74111 against the decision of the district director of customs at the port of Savannah

[Judgment for plaintiff.]

(Decided September 23, 1974)

Rode & Qualey (*Ellsworth F. Qualey* and *John S. Rode* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Velta A. Melnbrencis* and *Glenn E. Harris*, trial attorneys), for the defendant.

Before RICHARDSON, LANDIS, and NEWMAN, Judges

RICHARDSON, Judge: The merchandise in this case consists of ladies dresses which were manufactured in and exported from the Philippine

Islands in 1963 and 1964, classified in liquidation under TSUS item 382.03 upon entry at the port of Atlanta, Georgia, and accorded the duty rate reduction authorized for "Philippine articles" under General Headnote 3(c) of the Tariff Schedules of the United States. The plaintiff protests the reliquidation of 11 entries pursuant to 19 U.S.C.A., section 1521 (section 521, Tariff Act of 1930) under which the reduced duty rate was disallowed as to two of the entries, namely, A188 and A1272, allegedly because the dress material was said to have been imported into the Philippines directly from Japan and not from the United States, and the values were increased on all of the entries to include an "embroidery charge" said to have been omitted from the invoice values. The reliquidations resulted in increased duties being assessed against the plaintiff, and it filed the instant protest alleging the reliquidations to be illegal.

Plaintiff contends that a reliquidation under section 1521 does not authorize a "reappraisement" of the merchandise, and further, that the evidence does not establish that the district director either made a finding of probable cause to believe that there was fraud or that he could have had probable cause to believe there was fraud in the case.

The case was submitted upon the official papers which were offered by the plaintiff, and documentary evidence and the testimony of two witnesses which was offered by the defendant.

The record shows that the "reliquidations" had their genesis in two reports of customs representatives on the subjects of undervaluation and false invoicing. The first report (exhibit B–1) is authorized by Customs Representative Perry J. Spanos stationed in Hong Kong, and is dated June 19, 1964. It deals with Sweet Briar entries made at ports other than Atlanta. The Spanos report states the relationship between Sweet Briar (the American importer), Kalaw Clothes Factory (the Philippine manufacturer) and Toyo Menka Kaisha (the Japanese seller) as follows:

> Sweet Briar, Inc., of the United States ships United States made [1] (or Japanese made, but dyed and finished in the United States) cloth material on consignment to Kalaw Clothes Factory in Manila. Toyo Menka Kaisha, Osaka, Japan, ships various accessories such as buttons, zippers, belt-backings, hook and eye, on consignment to Kalaw Clothes Factory in Manila.
>
> Kalaw Clothes Factory cuts and sews the fabric into ladies dresses, suits, and blouses and then ships the garments to Sweet Briar, Inc., of the United States. The payments are arranged as follows: Sweet Briar, Inc., of the United States, advances a letter of credit to Toyo Menka Kaisha of Hong Kong which includes

[1] Customs Representative Spanos verified that between June 17, 1963 and February 11, 1964, Sweet Briar made four shipments of synthetic cloth material to Kalaw Clothes Factory totaling 160,000 yards.

> the value of the accessories, the making charges and commission (profit) earned by Toyo Menka. Toyo Menka, Hong Kong, advances a letter of credit to Toyo Menka, Osaka, for the value of the accessories and another letter of credit to Kalaw Clothes Factory in Manila for the making charges. This operation is graphically illustrated on attached Exhibit A.

The "Exhibit A" referred to in the Spanos report also indicates, among other things, that the Sweet Briar payments to Toyo Menka Kaisha, Hong Kong, included an amount for "embroidery charges." However, the report asserts that certain embroidery charges incurred in the Philippines on uncut material of American origin shipped there by Sweet Briar were not listed on the invoices covering the finished garments coming back to this country. In this connection the report states:

> The additional embroidery cost has never been shown on any of the invoices of supporting documents. . . .

And the Spanos report goes on to state:

> The reason for the numerous irregularities in the invoices of the instant merchandise listed in the letter from the customs agent in charge, Charleston, South Carolina, dated April 29, 1964 (C–8–50), are possibly due to "slip ups" by the seller in not adding the correct embroidery charges on the final invoice.

The "seller," according to the Spanos report, is Toyo Menka Kaisha, Ltd., of Osaka, Japan, who, the record shows, had also entered into a written contract with Kalaw Clothes Factory to furnish Kalaw with "raw materials" and "supplies" to be made into finished garments and shipped to any destination (except communist dominated territories) as instructed by Toyo Menka Kaisha. ("Exhibit B" of the Spanos report.) And it was the "seller" who controlled the price quotations recorded on the invoices investigated in the Spanos report.

The second report (exhibit B–3) giving rise to the "reliquidations" is authored by Senior Customs Representative Stewart H. Adams, also stationed in Hong Kong, dated July 13, 1965. This report transmits to the customs agent in charge at Savannah, Georgia, certified copies of Philippine customs documents purporting to show "that 21 United States entries were made of other than United States and Philippine materials." The Philippine documents referred to in the Stewart report are said to involve 11 entries made at Atlanta, 9 made at San Francisco, and 1 made at New York. Copies of some of these documents are annexed to the official papers in entry A1272,[2] and consist of: (1) a certificate of inspection, identification, and loading of the merchandise covered by entry A1272 pertaining to 624 dozen ladies

[2] Documents relating to other entries before the court were not put into evidence inasmuch as it was said that they were no longer available.

dresses issued by the Philippine Embroidery and Apparel Control and Inspection Board, (2) a listing of entry numbers of merchandise imported into the Philippines together with a description and quantity of the merchandise stapled to the reverse side of the aforementioned certificate, and (3) four Philippine customs entries covering rayon and cotton fabrics imported from Japan and bearing entry numbers which are the same as some of the entry numbers appearing on the aforementioned listing.

On the basis of exhibits B–1 and B–3, among other things, a third report (exhibit B) was compiled, and this by George C. Corcoran, Jr., customs agent in charge at the port of Savannah, who was one of the two witnesses who testified at the trial herein. The Corcoran report was addressed to the district director at Savannah under date of February 14, 1966, and reported alleged violations under 19 U.S.C.A., sections 1481, 1485, and 1592 against the plaintiff.

With respect to the omission of the embroidery charges reported in exhibit B–1, the Corcoran report states:

> During the investigation in the offices of Kalaw Clothes Factory, it was found that an embroidery charge averaging $9.20 per dozen for dresses, $4.50 per dozen for ladies' suits and $2.54 per dozen for ladies' blouses is incurred during the manufacture of these items; and this charge is not included on the invoices which were filed in support of entries covering the importation of this type of clothing.

And as to the entries at bar, the Corcoran report states:

> . . . A review of the Atlanta consumption entries covering Kalaw's shipments to Sweet Briar, Inc. disclosed the embroidery charges were not shown on the supporting invoices of seventeen entries.

With respect to the matter of false invoicing (i.e., country of origin), the Corcoran report states:

> On June 19, 1964 the Senior Customs Representative, Hong Kong made a report of his investigation, file 8–206 (Exhibit 4) at the factory of Amado L. Kalaw Clothes Factory, Philippine Islands. Investigation showed that Toyomenka Kaisha of Hong Kong actually contracts with Kalaw Clothes Factory to make up blouses, dressses and other items of clothing which are imported by Sweet Briar, Inc.

The report goes on to state:

> On February 8, 1965, I forwarded eighteen Atlanta entries to the Senior Customs Representative, Hong Kong. In a report dated July 13, 1965, the SCR, Hong Kong forwarded Philippine customs documents to this office and a review of these documents disclosed the fabric used in the manufacture of garments covered by six

entries were invoiced as material of United States origin when, in fact, the material used was of Japanese origin. . . .[3]

The balance of the report deals with the method of arriving at the proper constructed value and the loss of revenue to the Government resulting from the undervaluation and false invoicing. A copy of exhibit B–1 is annexed to the Corcoran report, among other documents, but exhibit B–3 does not appear to be among them.

The record shows that at the time in question Mrs. Marion F. Baker was the district director of customs at Savannah. Apparently, Mrs. Baker, upon receipt of the Corcoran report, communicated by letter with the regional commissioner of customs at Miami in April 1966, concerning the matter. The regional commissioner wrote to Mrs. Baker under date of April 26, 1966, as follows (exhibit A):

Dear Mrs. Baker:

This is in response to your letter of April 11, 1966, regarding penalties against Sweet Briar, Inc., Greenwood, South Carolina, for false invoicing and undervaluation.

We believe that the attorney for the importer is entitled to know exactly what accusations are being levied against his client. This may be done by exhibiting a representative entry to Mr. Rode. Savannah entry A188 dated August 3, 1964, would be an excellent example in that it shows that the merchandise is undervalued (embroidery charges are not included) and that the entry showed a false country of origin in order to obtain preferential rates.

In order to recover the actual loss of revenue, it is suggested that the liquidated entries covered by this case be reliquidated as soon as possible (Sec. 521 T.A.) using the constructed values shown in the Savannah CAC's report of February 14, 1966, file S–8–423.

Sincerely yours,

/s/ James H. Stover

JAMES H. STOVER,
Regional Commissioner.

At the trial Eugene H. Cobb, import specialist at Savannah, testified that the subject entries were originally liquidated "as entered" either by him or under his supervision at the entered values which became the appraised values, and at the entered rates of duty which were the Philippine preferential rates. The "reliquidations" in question were performed by the witness Cobb. As to his authority for reliquidating

[3] At the trial Mr. Corcoran was asked on direct examination by Government counsel how he determined that the material used in the manufacture of the merchandise covered by entry A1272 was of Japanese origin, and he replied (R. 82–83):

A. Well, as I recall, this was the case in all six entries, and I am sure in this case, the export documents from the Philippines showed the Philippine consumption entry numbers on the material, that was withdrawn from bond, to be manufactured, and they have the warehouse entries here, and they show the material was actually shipped from Japan to the Philippines and that the merchandise was Japanese merchandise.

the subject entries Mr. Cobb testified on direct examination by Government counsel as follows (R. 33):

> Q. Did there come a time in early 1966, Mr. Cobb, when you received instructions from any of your superiors to reliquidate the entries which you have just identified?—A. Yes, sir.
>
> Q. Approximately, when did that occur?—A. Well, we received the authority from the Regional Commissioner of Customs, I believe, on April 24, 1966, which was passed down to me from the District Director through her Assistant in charge of classification and value, which was Mr. William F. Murray, and I proceeded with the reliquidation of the entries.

The witness identified exhibit A as being "the authority from my superiors to reliquidate under Section 521 of the Tariff Act." And he testified that he was in possession of copies of exhibits A and B when he reliquidated the subject entries.

The district director, Marion F. Baker, was not called as a witness in the case.

Section 1521 reads:

> If the collector finds probable cause to believe there is fraud in the case he may reliquidate an entry within two years (exclusive of the time during which protest is pending) after the date of liquidation or last reliquidation.

The language of this statute contemplates a "finding" on the part of the district director (who succeeded to the powers of the collector) that probable cause exists to believe there is fraud in the case as a prerequisite to a reliquidation of an entry under the statute. See section 173.6, Customs Regulations. Where a statute requires a finding to be made by an official before an action can be authorized, the finding is the *sine qua non* to the taking of the action. *Power Comm'n* v. *Pipeline Co.*, 315 U.S. 575, 583 (1942). In the instant case there is no evidence that the district director, Marion F. Baker, ever made such a "finding" following her receipt of exhibit A. And there is no evidence of record as to the district director's state of mind following her receipt of exhibits B and B–1. Although defendant's counsel has argued extensively both at the trial and in his brief in support of the admissibility of evidence on the question of probable cause, he did so on behalf of Mr. Cobb,[4] the liquidating officer, whose function in

[4] Direct examination of witness Cobb (R. 38):

BY MR. HARRIS: (Cont'g)

Q. Mr. Cobb, do you have any personal knowledge as to the truth or lack of truth of the assertions in Defendant's Exhibit A for Identification that the embroidery charges were not included in the original appraised values of the merchandise in the various entries about which you have testified, or that the country of origin of the merchandise was falsely stated? Do you have any personal knowledge?—A. None, other than what was presented to me on the attachment of the agent's report. I had to rely entirely on that.

these premises was ministerial. Consequently, Mr. Cobb's state of mind relative to culpability on the matters the subject of investigation is irrelevant. Additionally, assuming the district director's authority to make a "finding" is delegable by her or her assistant district director there is no evidence of a delegation by her, and there is no evidence before the court of any letter of transmittal or conversation the witness Cobb may have had with William F. Murray, assistant district director, who is said to have handed exhibit A to the witness and who was in charge of entry liquidation.

The court cannot assume that a "finding" under section 1521 had been made by the district director in this case. On the basis of evidence disclosed in the customs agents' reports we think a belief of fraud would have been premature. Insofar as the embroidery charges are concerned, the Spanos report shows that embroidery charges were actually paid by the plaintiff; and the customs agent himself characterized their omission from the invoices as having been a "slip up." Thus, while the customs agent's report might be adequate to support a technical charge of undervaluation *per se*, it could hardly be sufficient to support the more serious charge of fraud.

As for the country of origin charge, the reports show that Kalaw Clothes Factory was the depository of synthetic fabric material originating from both Japan and the United States at or about the same time [from Japan by virtue of the formal contract identified as "Exhibit B" in the Spanos report and erroneously characterized in the Corcoran report as necessarily giving rise to the Sweet Briar importations]. Hence, it is not in the least surprising that Kalaw should have been the recipient of fabric material from time to time originating in Japan, and thus, while it was doing business with the plaintiff, as is reflected in the Philippine warehouse and consumption entries set forth in entry A1272 and transmitted to this country via exhibit B–3.

The only evidence which purports to connect these Philippine entries with the fabric material covered in entry A1272 is the presence of the "listing" heretofore mentioned in some 20 withdrawals bearing Philippine entry numbers that is attached to the reverse side of the Philippine export inspection certificate filed at the time of exportation of the merchandise covered by United States entry A1272. Apparently, this "listing" was taken at face value by the customs agents as linking the Philippine import and export entries.

But upon examination of this document the court finds that two things militate against the making of any such judgment concerning it on face value as was apparently made by the customs agents involved. One is that the withdrawal listing on one side of the document does not have the remotest connection with anything contained in the inspec-

tion certificate on the other side of the same document. The photocopy of the certificate of identification describes the merchandise exported from the Philippines to the United States as 624 dozen dresses on its face, and a photocopy of a document stapled to the back of the certificate shows various entries into the Philippines of a variety of merchandise which is not shown to be in any way connected with the 624 dozen dresses described on the face of the certificate. And the other thing is that the inspection certificate covers products whose spun rayon linen material content amounts to 8,852.29 yards according to the invoice in entry A1272, whereas the withdrawal of spun rayon linen as shown in the "listing" amounts only to 630 yards. Thus, here too, there is no real evidence to justify a belief of fraud.

The court does not at this juncture desire to be understood as substituting its own judgment in the matter for that of the district director. But it has not been shown to the court that the district director ever made the "finding" of probable cause to believe that there was fraud as is contemplated under section 1521, nor does the record here establish that there was reason to believe there was fraud.

The court agrees with plaintiff when it states, "there is no showing that the District Director took any action or made any decision at all." (Plaintiff's main brief, p. 10.) Consequently, the court finds, as aptly observed by Plaintiff, that "defendant's case is missing a major link in its chain of evidence." (Plaintiff's reply brief, p. 4.)

It follows from the foregoing that the reliquidations herein are illegal and void, and must, therefore, be set aside for the reasons stated.

Judgment will be entered herein accordingly.

(C.D. 4559)

C. J. TOWER & SONS OF BUFFALO, INC., a/c METCO, INC. *v.* UNITED STATES

Metal products

ALLOY—NICKEL ALUMINUM—INTIMATELY UNITED

The statutory definition provides that an alloy is a metallic substance consisting of two or more metals . . . intimately united, usually by fusion. The constituent metals of an imported powder which were in a ratio of 80 to 83% nickel and 17 to 20% aluminum were manufactured abroad by a metallurgical process which deposited a nickel matrix around an aluminum core positioning the particles as close to each other as is possible, without being fused together or dissolved in each other when molten.

Held: The constituent metals in the imported powder are "intimately united" within the statutory definition of the term alloy.

Though fusion is the usual method of forming an alloy, the statutory definition does not rule out other methods as long as the constituent metal substances are "intimately united", as they were in the imported merchandise.

Court No. 70/30847

Port of Buffalo

[Judgment for plaintiff.]

(Decided September 26, 1974)

Serki & Skalaroff (*Murray Sklaroff* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Frederick L. Ikenson* and *Wesley K. Caine*, trial attorneys), for the defendant.

RICHARDSON, Judge: The merchandise in this case, described on the invoice as "Composite PDR 82NI/AL18", was exported from Canada in October, 1968, and classified in liquidation upon entry at Buffalo–Niagara Falls, N.Y. under TSUS item 657.50 as modified by T.D. 68–9 as articles of nickel, not coated or plated with precious metal, at the duty rate of 16 *per centum ad valorem*. It is claimed by the Plaintiff-broker that the merchandise should be classified under TSUS item 620.32 as modified by T.D. 68–9 as nickel powders, free of duty.

It is admitted in the pleadings before the court that the powder is in chief weight and value of nickel, and that each particle of the powder consists of a core material of aluminum coated with nickel. In issue under the pleadings is plaintiff's allegation that the merchandise at bar is purchased and sold as composite powder, 82% nickel and 18% aluminum. However, prior to trial herein, and solely for purposes of its cross-motion, the defendant admitted this particular allegation in the complaint when the issues raised by the pleadings were before the court for disposition on plaintiff's motion for judgment on the pleadings and the defendant's cross-motion for the same relief. See *C. J. Tower & Sons of Buffalo, Inc., a/c Metco, Inc.* v. *United States*, 68 Cust. Ct. 377, 378, C.R.D. 72–11, 343 F. Supp. 1387 (June 15, 1972).

In C.R.D. 72–11 the court (Maletz, J.) denied both the aforesaid motion and cross-motion. In denying the motion, the court said:

> It was not alleged in the complaint, nor can the court conclude from the pleadings, that the merchandise is nickel or nickel alloy in a basic shape or form. For one thing, the imported merchandise is obviously not nickel *per se* in view of the presence of the aluminum. Further, absent admissions or receipt of additional facts, such as the method of production or manufacture, there is no basis upon which the court can determine whether the merchandise is an alloy within the meaning of schedule 6, part 2, headnote 2(a), that is, a "metallic substance consisting of two or more metals * * * intimately united, usually by having been fused together"

> or a sintered mixture of metal powders obtained by fusion or a heterogeneous intimate mixture obtained by fusion.

In connection with this phase of its opinion the court concluded that the provision for nickel applied only to an importation of nickel in a pure state down to a content by weight of 99.0 percent and in a basic shape or form, and that such provision, among others, could not be satisfied with the application of the component material of chief value concept.

In denying the cross-motion, the court said:

> Considering the present pleadings with the foregoing in mind, it cannot be said with any degree of certainty that plaintiff would be unable to offer proofs tending to establish the ultimate facts necessary to support its claim for classification of the merchandise as nickel powder under item 620.32, specifically, that it is a nickel alloy in a basic shape or form. This being the situation, plaintiff should not be foreclosed from the opportunity to present its proofs. . . .

Following disposition of the motions as aforesaid the case was brought to trial and evidence presented as to the method of manufacture of the subject merchandise and its uses, among other things, at the conclusion of which trial plaintiff moved for a decision by the court from the bench on the issue of whether plaintiff had established the imported merchandise to be a nickel alloy. The court, however, reserved decision in the case.

In its main brief plaintiff argues not only that the subject merchandise is a nickel alloy powder, but also that it is a nickel powder by reason of nickel being the component material of chief value, and that Judge Maletz' decision on plaintiff's prior motion excluding the component material of chief value theory from application under item 620.32 is erroneous. Defendant argues that Judge Maletz' rulings in C.R.D. 72–11 constitute the law of the case and should preclude inquiry by this court as to whether the imported merchandise is a nickel powder as distinguished from an alloy of nickel, that the merchandise is not an alloy of nickel because its two metals, while united, are not intimately united in that there has been no complete intermixture or fusion of the metals, and that perforce of the law of the case doctrine derived from the court's rulings in C.R.D. 72–11 plaintiff has not shown the imported merchandise to be in a basic shape or form.

The rulings by Judge Maletz are deemed the law of the case here for purposes of resolution of this case. When one judge sitting in a case establishes the law of the case, a second judge subsequently sitting in the case should normally follow the ruling of the first judge. See: *Williams* v. *New Jersey-New York Transit Co.*, 1 F.R.D. 138 (S.D.N.Y., 1940), and *Riss & Company* v. *Association of Western*

Railways, 162 F. Supp. 69, 72 (U.S.D.C., D.C., 1958). And since the rulings in C.R.D. 72–11 foreclose plaintiff from arguing anew that the subject merchandise is nickel *per se*, or that the phrase "basic shapes and forms" is used in schedule 6, part 2, of TSUS in a cumulative context and not as a *limitation*, the only issue presently before this court for disposition is whether the imported merchandise has been shown to be an alloy of nickel in a basic shape or form.

The statutes pertinent to this issue read:

[classified]

Schedule 6, Part 3, Subpart G, Tariff Schedules of the United States, as modified by the Geneva (1967) Protocol to GATT and Other Agreements, and Presidential Proclamation, T.D. 68–9.

Subpart G headnote:

1. This subpart covers only articles of metal which are not more specifically provided for elsewhere in the tariff schedules.

* * * * * * *

657.50	Articles of nickel, not coated or plated with precious metal	16% ad val.

[claimed]

Schedule 6, Part 2, Subpart E, Tariff Schedules of the United States, as modified, *supra*.

Part 2 headnotes:

1. This part covers precious metals and base metals (including such metals when they are chemically pure), their alloys and their so-called basic shapes and forms, and, in addition, covers metal waste and scrap. Unless the context requires otherwise, the provisions of this part apply to the products described by whatever process made. . . .

2. Alloys.—. . . Alloys are metallic substances consisting of two or more metals, or of one or more metals and one or more non-metals, intimately united, usually by having been fused together and which may not have been dissolved in each other when molten; they include sintered mixtures of metal powders and heterogeneous intimate mixtures obtained by fusion, but do not include substances in which the total weight of the metals does not equal or exceed the total weight of the non-metal components.

* * * * * * *

Subpart E headnotes:

1. This subpart covers nickel, its alloys, their so-called basic shapes and forms, and also includes nickel waste and scrap.

2. Alloys of nickel: For the purposes of the tariff schedules, alloys of nickel are metals in which the nickel content is, by weight, less than 99.0 percent, but not less than any other metallic element. In the absence of context which requires otherwise, the term "nickel", wherever used in the tariff schedules, includes alloys of nickel.

* * * * * * *

Nickel powders and flakes:

* * * * * * *

620.32	Powders	Free

The evidence presented at the trial establishes that the imported merchandise is manufactured in Canada by the Sherritt Gordon Mines, Limited, of Fort Saskatchewan, Alberta, Canada, who employs a patented hydrogen reduction method for transferring nickel particles onto suspended cores of aluminum particles, the details of which manufacturing method were described at length by a witness connected with Sherritt Gordon Mines. Under this method of production nickel ore is concentrated, then leached and boiled so as to yield a solution of pure nickel. The nickel is then deposited onto suspended aluminm particles in a nickel reduction autoclave. The aluminum powder utilized in the manufacture of the imported merchandise was sent to Canada by Metco, Inc. of Long Island, N.Y., who is the ultimate consignee of the merchandise at bar. And the ratio of nickel to aluminum in the resulting composite powder imported herein is on the order of 80 to 83% nickel and 17 to 20% aluminum.

The composite nickel/aluminum powder imported herein is marketed by the ultimate consignee as a consumable product known as Metco 404 for use in a flame spray process by means of which a metallic coating is applied to various metal surfaces. During the flame spraying process, the equipment for which is also marketed by Metco, the composite powder at bar is converted to nickel aluminide which forms a metallurgical bond and aftercoating to the surface of metals to which it is applied.

In describeing the relationship between the nickel matrix and aluminum core of the imported powder, Dr. David John Ivor Evans, director of the research and development division of Sherritt Gordon Mines, testified (R. 43–45):

Q. Would you tell us, please, the physical relationship between the nickel and the aluminum in the composite powder under discussion?—A. I think the photographs have shown this very clearly and—

Q. Which photographs in particular, doctor? If you are speaking of photographs I would appreciate it if you took these and read the numbers off the back rather than any other notes that you may have.—A. I think these photographs illustrate to anybody engaged in working in the field of metallurgy, indicate very clearly that the nickel and the aluminum are as close as they can possibly be to one another.

Q. Which photographs are you speaking of, doctor?—A. I am speaking in particular of Exhibit No. 9, and Exhibit No. 10.

Q. No. Check the numbers on that.—A. Exhibit 11, sorry. These two indicate that there is no barrier between the nickel and the aluminum. They are as closely united as they can possibly be.

Q. Would you refer to that as intimately united?

* * * * * * *

A. In my terminology, I would say they are very, very definitely intimately united. And there is no physical means that I am aware of for separating the nickel from the aluminum in this powder form. There is no physical means of making that separation. It is quite different from a mixed powder. If we had a powder of aluminum particles then they could be separated very easily either by a density difference or by magnetic separation. So, it is definitely not a mixed powder. The relationship between the two is much more intimate than of a mixed powder.

Evidence was adduced by the defendant bearing upon the industry usage and understanding of the term "alloy", and also of chemical, spectographic and X-ray analyses made on a sample of the merchandise at bar by the Government. Witnesses called on behalf of the Government, namely, a chemist in the employ of the Customs Service and an expert in the field of metallurgy, were of the opinion that the nickel and aluminum components of the imported powder could be separated by physical means. However, neither witness was able to testify concerning any such physical means of separation of the constituent metals.

It is settled law that where, as here, Congress has provided a clear definition of terms employed in a tariff statute the industry understanding of those terms does not determine the construction to be given them by the courts. *United States* v. *Stone & Downer Co.*, 274 U.S. 225 (1927). See also, *E. H. Bailey & Co.* v. *United States*, 10 Cust. Ct. 170, C.D. 746 (1943).

Plaintiff contends that the imported powder comes within the ambit of the statutory definition of the term "alloy" noted herein. And defendant, on the other hand, disavows that claim. Obviously, the key phrase in the statutory definition in question is the phrase "intimately

united". It is clear that the language of the definition which immediately follows the phrase "intimately united" down to the word "but" is at best *directory* of the scope of the phrase "intimately united" and is not a *limitation* of the phrase. Hence, the question to be determined here is whether the nickel and aluminum constituents of the imported powder are "intimately united" even though they are not the product of fusion or sintering. Also, the definition indicates that the method of uniting the constituent parts is *usually* by fusion "together and which may or may not have been dissolved in each other when molten." The word "usually" does not mean "always" and admits the possibility of other ways of intimately uniting constituent parts of metal substances.

It appears to the court that the statutory definition in question is the product, at least in part, of the common understanding of the term "alloy", modified to reflect the desire of the framers of the language to broaden the scope of the term. See: Tariff Classification Study, Schedule 6, pages 86–88. Some of the words employed in the statutory definition of "alloy" derive almost verbatim from the definition of the term found in Webster's Third New International Dictionary on page 58 (1961 edition) which reads:

> alloy . . . 3 a: a substance composed *of two or more metals intimately* mixed and *united usu. by* being *fused together and* dissolving *in each other when molten* . . . .[Emphasis added.]

But it seems that the framers of the definition in issue, in borrowing language from Webster, omitted the word *mixed* which followed the word *intimately* in Webster's definition, and, also modified the exemplar taken from Webster to indicate that particle fusion need not always result from mutual dissolution. Thus, it would appear that Congress did not intend that the statutory definition of "alloy" required any intermixture of the constituent metals. Consequently, the phrase "intimately united" must be regarded as being broader than the scope contended for by the defendant.

The court is of the opinion that the phrase "intimately united" as employed in the statutory definition of the term "alloy" was intended by Congress to apply to a combination of metals, among other things, in close contact, association, or connection with each other, and that interpenetration of the abutting surfaces of the combined metals was not prerequisite to inclusion of the combination within the definition. In the opinion of the court the statute puts emphasis on *unification*, and not on the *means* by which such unification is attained.

The evidence presented by the plaintiff in this case that a degree of unification of the constituent metals of the imported powder has been achieved satisfies both the general and specific requirements set out in the statutory definitions under consideration. A metal powder

is of a basic shape or form, and there is no question in the court's mind but that the imported powder is in a basic shape or form. Both the core and the matrix were in powder form, and the end product resulting from their union remained in powder form. No additional proof would seem to be required of plaintiff at this point.

For the reasons stated, plaintiff's claim that the imported merchandise is a nickel alloy powder is sustained. Judgment will be entered accordingly.

Decisions of the United States Customs Court

Custom Rules Decision

(C.R.D. 74–10)

MODERN CLOTHING, INC. *v.* UNITED STATES

On Plaintiff's Motion To Correct Filing Date on Summons and Defendant's Cross-Motion To Dismiss in Part

Court No. 74–2–00585

[Motion to correct records of clerk granted; cross-motion to dismiss denied.]

(Dated September 27, 1974)

Musgrave, Welbourn & Fertman (*Leonard M. Fertman* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Saul Davis* and *Michael S. O'Rourke*, trial attorneys), for the defendant.

MALETZ, Judge: This is a civil action brought by plaintiff pursuant to 28 U.S.C. (1970 ed.) § 2632(a) to contest the denial of six protests which were included in a single summons.[1]

Plaintiff has moved, pursuant to this court's rules 3.2(d)(2) and 3.2(d)(3), to correct the records of the clerk of the court with respect to the date of filing that was stamped by the clerk on the summons. Defendant in turn has filed a cross-motion to dismiss the action insofar as it relates to the entries covered by protest no. 2704–3–002819 on the ground that rule 3.2(d)(3) is "unconstitutional" and "*ultra vires*"

[1] Section 2632(a) provides:

(a) A party may contest denial of a protest under section 515 of the Tariff Act of 1930, as amended, or the decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended, by bringing a civil action in the Customs Court. A civil action shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court.

and that the action as it relates to this protest was therefore not filed within the time prescribed by § 2631(a)(1).[2]

Rule 3.2(d) provides as follows:

> (1) The records of the clerk, including the date of filing stamped on the summons, shall be final and conclusive evidence of the date on which a summons was filed unless a motion to correct the record is made and granted pursuant to subparagraph (2) of this paragraph (d).
>
> (2) A party who contends that the effective filing date of a summons should be a date other than the date shown in the records of the clerk may seek a corrective order by motion made pursuant to Rule 4.12, and the court may, upon satisfactory proof that the records of the clerk with respect to the filing date were incorrect, order the record corrected.
>
> (3) When a summons is received through the mail by the clerk after the last date allowed by a statute of limitations for the commencement of an action, the court may, upon motion made pursuant to subparagraph (2) of this paragraph (d), order the summons to be deemed to have been filed on the last date allowed if it is shown upon satisfactory proof: that the summons was sent by registered or certified mail, properly addressed to the clerk of the court at One Federal Plaza, New York, New York 10007, with return receipt requested; that it was deposited in the mail sufficiently in advance of the last date allowed for filing to provide for receipt by the clerk on or before such date in the ordinary course of the mail; and that the person sending the summons exercised no control over the mailing between the deposit of the summons in the mail and its delivery.

The facts—which have been established by an affidavit submitted by counsel for plaintiff—are not in dispute. They are as follows: The summons in the case was sent by certified airmail on Monday, February 25, 1974, properly addressed to the clerk of the court, with return receipt requested. It had affixed thereto the proper amount of airmail postage and was deposited personally by counsel for plaintiff in the airmail receptacle at the Los Angeles International Airport Post Office at about 4.30 p.m., February 25, 1974—which was prior to the final collection of airmail on that day. The posting of the summons on Monday, February 25, 1974, was sufficiently in advance of Wednesday, February 27, 1974—the last day for timely filing of the summons—to have reached the clerk's office by the last day in the ordinary course

[2] Section 2631(a)(1) provides:

> (a) An action over which the court has jurisdiction under section 1582(a) of this title is barred unless commenced within one hundred and eighty days after:
>
> (1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515(a) of the Tariff Act of 1930, as amended; * * *

It is to be noted that in accordance with defendant's request, oral argument was held on the cross-motions.

of the airmail. However, the summons was not delivered to the clerk's office until Thursday, February 28, 1974.[3] No control was exercised by the sender over the mailing of the summons between its deposit in the mail and its late delivery. From the foregoing, it is clear that all the mailing requirements prescribed by rule 3.2(d)(3) have been met by plaintiff—and defendant so concedes.

Defendant, however, challenges the statutory validity of rule 3.2(d)(3) contending, as previously mentioned, that it is "unconstitutional" and "*ultra vires*." As to this, it is important to observe that an identical argument challenging the validity of this rule was previously made by defendant and rejected by this court in *Texas Mex Brick & Import Co.* v. *United States*, 72 Cust. Ct. —, C.R.D. 74-2, 371 F. Supp. 579 (1974). In *Texas Mex* Judge Newman held, in a cogent and well-reasoned opinion, that "rule 3.2(d)(3) is within the scope of the court's authority to adopt rules; and that such rule does not conflict with, abrogate, or extend the 180-day time period specified by 28 U.S.C. § 2631(a)(1) for the commencement of an action by filing a summons." 72 Cust. Ct. at —, 371 F. Supp. at 584. To quote from his opinion (72 Cust. Ct. at —, 371 F. Supp. at 582):

> Generally, a summons or other paper is "filed" when it is *received* by the court. *Andrew Dossett Imports, Inc.* v. *United States*, 69 Cust. Ct. 334, C.R.D. 72-26, 351 F. Supp. 1404 (1972). However, rule 3.2(d)(3) provides, in effect, that a summons "received" after the expiration of the filing period specified in § 2631(a)(1) may be deemed to have been timely "filed" if such summons was mailed in the manner prescribed. Therefore rule 3.2(d)(3), in effect, creates an exception to the general rule that a summons is filed upon receipt, and provides instead that the summons is deemed filed on the last date allowed for commencing an action. I am clear that this court has authority to explicitly provide that something other than receipt may constitute the filing of the summons, particularly since under § 2632(a) Congress specifically authorized this court to adopt rules governing the "manner" of filing a summons.
>
> While rule 3.2(d)(3) plainly contemplates *receiving* a summons after the expiration of the statutory filing period (if mailed in the prescribed manner), such rule does not purport to extend the statutory period for *filing* a summons, since if the requisites of mailing are complied with, the summons is deemed timely filed (viz., on the last date allowed under § 2631(a)(1)). Thus, the rule merely purports to make reasonable provision for delays in the *receipt* of summonses sent through the mail, not delays in *filing* summonses. [Emphasis in original.]

[3] The summons was stamped by the clerk "Received" and "Filed" February 28, 1974. Also, a photostatic copy of the return receipt, submitted by plaintiff, shows delivery by the post office on February 28, 1974.

Further in *Texas Mex*, Judge Newman, after discussing the case of *Charlson Realty Company* v. *United States*, 384 F.2d 434 (Ct. Claims, 1967), added (72 Cust. Ct. at —, 371 F. Supp. at 583):

> This court, like the Court of Claims, has national jurisdiction, and parties invoking Customs Court jurisdiction necessarily depend greatly upon the mail for the service and filing of papers. Hence, it is indeed appropriate that this court has promulgated a rule very similar to rule 21(b)(2)(iii) of the Court of Claims. Significantly, the Court of Claims promulgated this rule as a result of *Charlson*, which rule, in point of fact, is known as the "Charlson Rule". See Rules of the United States Court of Claims, Index at page 174. And significantly, too, the Customs Court adopted the "Charlson Rule" with minor changes in language to conform to our practice.

Suffice it to say that I am in entire accord with the decision in *Texas Mex* and therefore hold that rule 3.2(d)(3) is a statutorily valid exercise of the court's authority.

Finally, defendant requests that if its cross-motion to dismiss in part be denied, the court should issue a statement pursuant to rule 13.2(a) that a controlling question of law is involved as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate determination of the litigation. This request for issuance of a rule 13.2(a) statement is denied. For, in my view, there is no controlling question of law involved as to which there is a substantial ground for difference of opinion. Nor do I believe that an immediate appeal from the order may materially advance the ultimate determination of the present litigation.

Accordingly, it is ORDERED that:

1. Plaintiff's motion to correct the records of the clerk, including the date of filing stamped on the summons, be granted.

2. The summons in this action shall be deemed to have been filed on February 27, 1974; and the records of the clerk, including the date of filing stamped on the summons, shall be corrected to show that the date of the filing of the summons was February 27, 1974.

3. Defendant's cross-motion to dismiss in part be denied.

4. Defendant's request for issuance of a rule 13.2(a) statement be denied.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *September 30, 1974.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/719	Richardson, J. September 23, 1974	New York Merchandise Co., Inc., et al.	66/9263, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/720	Richardson, J. September 23, 1974	Ross Products, Inc., et al.	66/54560, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/721	Watson, J. September 23, 1974	Gosho Trading Co., Inc.	68/4908, etc.	Item 684.70 15%	Item 685.22 12.5%	Agreed statement of facts	New York Earphones (not headphones) of a type chiefly used with radios
P74/722	Watson, J. September 23, 1974	Progress Lighting Div. of L.C.A. Corporation	72-6-01350, etc.	Item 653.39 19%	Item 687.30 5.5% or 5% on basis of export value; said value is 23¢, each, packed (bulbs) Item 653.39 19% on basis of export value; said value is appraised value for fluorescent lamps plus bulbs, less 23¢, each, packed (fluorescent lamps)	Mobilite, Inc. v. U.S. (C.R.D. 73-11)	Philadelphia Fluorescent lamps with bulbs (not entireties)

P74/723	Watson, J. September 23, 1974	Union Novelty Co., Inc.	69/14395–S, etc.	Item 748.20 28%, 26.5% and 25%	Item 774.60 17%, 15% and 13.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/724	Maletz, J. September 23, 1974	Creative Playthings, Inc.	68/1102, etc.	Item 737.90 35%	Item 737.55 21%	Agreed statement of facts	New York Toy building blocks, bricks and shapes
P74/725	Newman, J. September 23, 1974	Seaway Importing Co.	70/19092, etc.	Item 206.97 or 207.00 16⅔% or 15%	Item 727.35 10.5% or 9%	The American Import Co. et al. v. U.S. (C.D. 3807)	Seattle Gun racks
P74/726	Boe, C.J. September 24, 1974	Bloomingdales, Div. of Fed. Dept. Stores, et al.	70/61829, etc.	Item 706.60 20%	Item 774.60 15% or 13.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P74/727	Boe, C.J September 24, 1974	J.M. Fields, Inc., et al.	73–7–01689, etc.	Item 706.60 20%	Item 774.60 11.5%, 10% and 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic bags in various sizes, having wide openings and handles with no closure on top
P74/728	Boe, C.J. September 24, 1974	Franshaw, Inc .	71–10–01572	Item 706.60 20%	Item 774.60 11.5% or 10%	Adolco Trading Co et al. v. U.S. (C.D. 4487)	New York Shopping bags
P74/729	Boe, C.J. September 24, 1974	S.S. Kresge Co.	72–12–02581, etc.	Item 706.60 20%	Item 774.60 10%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	Seattle Shopping bags
P74/730	Boe, C.J. September 24, 1974	F. W. Woolworth Co. et al.	72–6–01435, etc.	Item 706.60 20%	Item 774.60 11.5%, 10% or 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Shopping bags

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/731	Ford, J. September 24, 1974	Mohegan International Corp.	66/20952	Par. 1531 or 1531/1559(a) 20%	Radio cases were not but should have been appraised as entireties with radios; appraisement and liquidation void; protest premature and dismissed; entry papers returned to appropriate customs officers for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios (entireties)
P74/732	Ford, J. September 24, 1974	Mohegan International Corp.	66/20956	Par. 1531 or 1531/1559(a) 20%	Radio cases were not but should have been appraised as entireties with radios; appraisement and liquidation void; protest premature and dismissed; entry papers returned to appropriate customs officers for action not inconsistent with decision	Judgment on the pleadings Lafayette Radio Electronics Corp. v. U.S. (C.A.D. 977)	New York Radio cases imported with radios (entireties)

P74/733	Ford, J. September 24, 1974	Montgomery Ward & Co.	67/43330, etc.	Item 684.70 15% or 13%	Item 685.40 11.5% or 10%	General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	New York Earphones
P74/734	Richardson, J. September 24, 1974	Brechner Bros. et al.	66/42684, etc.	Item 653.40 19%	Item 688.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994) U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Electric bird cages, etc.
P74/735	Watson, J. September 24, 1974	Reliance Trading Corp. of America	72-5-01186	Item 748.20 25%, 23.5% or 22%	Item 774.60 13.5%, 11.5% or 10%	Armbee Corporation et al. v. U.S. (C.D. 3278) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles; Chicago; New York Artificial flowers, etc.
P74/736	Watson, J. September 24, 1974	S. Shamash & Sons, Inc.	68/2846	Item 337.70 23%	Merchandise not imported should not have been assessed with duty	Agreed statement of facts	New York Shortage of 6 cartons of silk piece goods
P74/737	Newman, J. September 24, 1974	Norca Corp.	67/4610, etc.	Item 657.35 15% plus 1.275¢ per lb. (items marked "A" and "C") Item 657.20 19% or 17% (items marked "B")	Strainers and bases or plugs and stoppers separately dutiable; no separate values returned; appraisements and liquidations void; entries returned to regional commissioner for appropriate administrative action (items marked "A", "B" and "C")	The Westbrass Company v. U.S. (C.D. 4203) (items marked "A", "B" and "C")	New York Sink strainers and bases (items marked "A" and "B") Laundry tray plugs and rubber stoppers (items marked "C")

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/738	Watson, J. September 25, 1974	Bam-Bee's, Inc.	72-8-01742, etc.	Item 748.20 23.5% and 22%	Item 774.60 11.5% and 10%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/739	Watson, J. September 25, 1974	Beck Distributing Corp. et al.	68/25791, etc.	Item 653.40 or 653.39 19% (items marked "A" and "B")	Item 683.65 (items marked "A") or 685.70 (items marked "B") 8.5%, 7.5%, 6.5%, 5.5%, 5% and 4%	Agreed statement of facts (items marked "A" and "B")	New York Electric lighting equipment designed for motor vehicles (items marked "A") Electrical visual signalling apparatus or parts (items marked "B")
P74/740	Watson, J. September 25, 1974	Alex W. Block Co.	69/25857	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	Chicago Artificial flowers, etc.
P74/741	Watson, J. September 25, 1974	Kwan Yuen Co., Inc.	72-2-00363	Item 748.20 26.5%	Item 774.60 15%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc.
P74/742	Watson, J. September 25, 1974	Teters Floral Products Co., Inc.	72-1-00116	Item 748.20 23.5%	Item 774.60 11.5%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185)	New Orleans Artificial flowers, etc.

						Joseph Markovits, Inc. v. U.S. (C.D. 4396) Joseph Markovits, Inc. v. U.S. (C.D. 4391	
P74/743	Watson, J. September 25, 1974	Union Novelty Co., Inc.	67/30935-S, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, fruits, leaves, etc.
P74/744	Watson, J. September 25, 1974	F. W. Woolworth Co.	69/32035	Item 748.20 26.5%	Item 774.60 15%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	San Francisco Artificial flowers, etc.
P74/745	Ford, J. September 26, 1974	Montgomery Ward & Co. et al.	68/10272, etc.	Item 684.70 15%	Item 685.22 12.5%	Transamerican Electronics Corp. et al. v. U.S. (C.D. 4405)	New York Earphones imported with radios
P74/746	Richardson, J. September 26, 1974	General Instrument Corporation	70/50975, etc.	Item 685.80 12.5%, 12% or 11% without allowance under item 807.00	Item 685.80/ 807.00 12.5%, 12% or 11%; cost or value of U.S. components (items marked "A") deductible from full value of imported capacitors	General Instrument Corporation v. U.S. (C.A.D. 1106)	New York American goods returned (capacitors)
P74/747	Watson, J. September 26, 1974	A. A. Importing Co.	71-10-01460	Item 748.20 23.5%	Item 774.60 11.5%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Seattle Artificial plastic ferns and bananas

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P74/748	Watson, J. September 26, 1974	Harry N. Bloomfield	69/32461, etc.	Duty assessed on entire quantity of wool although certain bales were reported "manifested not found"	Merchandise reported "manifested not found" not imported; duties illegally assessed; district director ordered to reliquidate entries making allowance for duty assessed on said bales of wool	Agreed statement of facts	Boston Shortage (bales of wool covered by entry Nos. 221413 and 133057)
P74/749	Watson, J. September 26, 1974	Robert Bosch Corp.	70/40996	Item 685.90 17.5%, 15.5% or 14%	Item 683.60 8.5%	Robert Bosch Corp. et al. v. U.S. (C.D. 3881)	San Francisco Solenoid switches
P74/750	Watson, J. September 26, 1974	M. B. Daniels & Co., Inc.	67/51654	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporation et al. v. U.S. (C.D. 3279)	New York Plastic flower shower curtain hooks

P74/751	Watson, J. September 26, 1974	Gerard M. Ducorday	72-1-00248	Item 748.20 26.5%	Item 774.60 15%	First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	Los Angeles Artificial flowers, etc
P74/752	Watson, J. September 26, 1974	Mar-Lyn Imports Corp.	67/26488-S, etc.	Item 748.20 28%	Item 774.60 17%	Joseph Markovits, Inc. v. U.S. (C.D. 4396)	New York Artificial ferns, etc.
P74/753	Watson, J. September 26, 1974	New York Merchandise Co., Inc.	67/10960, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunoid Trading Corporation et al. v. U.S. (C.D. 3279) First American Artificial Flowers, Inc. v. U.S. (C.D. 4185) Joseph Markovits, Inc. v. U.S. (C.D. 4396)	San Diego Artificial flowers, etc.
P74/754	Watson, J. September 26, 1974	Gene Shillingford & Sons, Inc.	69/27710	Item 653.39 19%	Item 683.65 7.5%	Agreed statement of facts	Philadelphia Electric lighting equipment designed for motor vehicles, or parts thereof
P74/755	Maletz, J. September 26, 1974	Lep Transport, Inc.	73/3	Item 646.92 17%	Item 692.27 8.5%	Gallagher & Ascher Company v. U.S. (C.D. 3899)	Chicago Lock plugs

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/341	Re, J. September 23, 1974	Balfour, Guthrie & Co., Ltd.	R58/26262, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood
R74/342	Re, J. September 23, 1974	Balfour, Guthrie & Co., Ltd.	R59/851	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood
R74/343	Re, J. September 23, 1974	Balfour, Guthrie & Co., Ltd., et al.	R59/6609, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Longview (Portland, Oreg.) Japanese plywood

R74/344	Re, J. September 24, 1974	Getz Bros. & Co., Inc.	282562-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood
R74/345	Re, J. September 24, 1974	B. A. McKenzie & Co., Inc.	R61/17315, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/346	Re, J. September 24, 1974	National Carloading Corp.	R58/20076, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/347	Re, J. September 24, 1974	U.S. Plywood Corporation	278814-A	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R74/348	Re, J. September 24, 1974	W.R. Zanes & Company	R61/2971	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Galveston Japanese plywood
R74/349	Watson, J. September 25, 1974	Robert F. Barnes	R65/10411, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	San Antonio (Laredo) Phonograph records
R74/350	Watson, J. September 25, 1974	Brown, Alcantar & Brown, Inc., a/c RCA Records Div.	R70/9048, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	El Paso Phonograph records

Decisions on Applications for Rehearings Before the United States Court of Customs and Patent Appeals

SEPTEMBER 12, 1974

APPEAL 5516.—United States *v.* Vicki Enterprises. Inc.—OPTICAL GOODS (FIELD GLASSES), REAPPRAISEMENT OF.—A.R.D. 302 (R.D. 11750) affirmed June 13, 1974. C.A.D. 1125. Application for rehearing filed by appellant on July 15, 1974, denied.

SEPTEMBER 19, 1974

APPEAL 74–7.—Montgomery Ward & Co., Inc. *v.* United States—UNASSEMBLED ELECTRONIC ORGAN—ELECTRONIC MUSICAL INSTRUMENT—PARTS OF—TSUS.—C.D. 4430 reversed June 27, 1974. C.A.D. 1131. Application for rehearing filed by appellee on August 14, 1974, denied.

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *October 9, 1974.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs Officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[TEA-W-248]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 301(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers and former workers of the Gettysburg, Pa., Dillsburg, Pa., and East Berlin, Pa., plants of Gettysburg Shoe Co., Gettysburg, Pa., a wholly owned subsidiary of Dero Industries, Inc., New York, N.Y., the United States Tariff Commision, on October 1, 1974, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.45 and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located at 6 World Trade Center.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued October 2, 1974.

[TEA–W–249]

WORKERS' PETITION FOR A DETERMINATION UNDER SECTION 310(c)(2) OF THE TRADE EXPANSION ACT OF 1962

Notice of investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the workers and former workers of the Harrison, New Jersey, plant of the RCA Corp., New York, New York, the United States Tariff Commission, on October 7, 1974, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with electronic receiving tubes and components thereof known as mounts (of the types provided for in item 687.60 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed within 10 days after the notice is published in the *Federal Register.*

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued October 8, 1974.

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